

## **Part 1**

### **Intestate Succession**

#### **75-2-101 Intestate succession.**

- (1) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as provided in this title, except as modified by the decedent's will.
- (2) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his intestate share.

Repealed and Re-enacted by Chapter 39, 1998 General Session

#### **75-2-102 Intestate share of spouse.**

- (1) The intestate share of a decedent's surviving spouse is:
  - (a) the entire intestate estate if:
    - (i) no descendant of the decedent survives the decedent; or
    - (ii) all of the decedent's surviving descendants are also descendants of the surviving spouse;
  - (b) the first \$75,000, plus 1/2 of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.
- (2) For purposes of Subsection (1)(b), if the intestate estate passes to both the decedent's surviving spouse and to other heirs, then any nonprobate transfer, as defined in Section 75-2-206, received by the surviving spouse is added to the probate estate in calculating the intestate heirs' shares and is conclusively treated as an advancement under Section 75-2-109 in determining the spouse's share.

Amended by Chapter 93, 2010 General Session

#### **75-2-103 Share of heirs other than surviving spouse.**

- (1) Any part of the intestate estate not passing to a decedent's surviving spouse under Section 75-2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:
  - (a) to the decedent's descendants per capita at each generation as defined in Subsection 75-2-106(2);
  - (b) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;
  - (c) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them per capita at each generation as defined in Subsection 75-2-106(3);
  - (d) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:
    - (i) half to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation as defined in Subsection 75-2-106(3); and

- (ii) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking per capita at each generation as defined in Subsection 75-2-106(3);
- (e) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the same manner as the half described in Subsection (1)(d);
- (f) if there is no taker under Subsection (1)(a), (b), (c), (d), or (e), but the decedent has:
  - (i) one deceased spouse who has one or more descendants who survive the decedent, the estate or part of the estate passes to that spouse's descendants who survive the decedent, the descendants taking per capita at each generation as defined in Subsection 75-2-106(4); or
  - (ii) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part of the estate passes to each set of descendants, the descendants taking per capita at each generation as defined in Subsection 75-2-106(4).
- (2) For purposes of Subsections (1)(a), (b), (c), (d), (e), and (f) any nonprobate transfer, as defined in Section 75-2-205, received by an heir is added to the probate estate in calculating the intestate heirs' shares and is conclusively treated as an advancement under Section 75-2-109 to the heir in determining the heir's share.

Amended by Chapter 93, 2010 General Session

Amended by Chapter 324, 2010 General Session

#### **75-2-104 Requirement of survival by 120 hours -- Individual in gestation.**

- (1) For purposes of intestate succession, homestead allowance, and exempt property, and except as otherwise provided in Subsection (2), the following rules apply:
  - (a) An individual born before a decedent's death who fails to survive the decedent by 120 hours is considered to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period.
  - (b) An individual in gestation at a decedent's death is considered to be living at the decedent's death if the individual lives 120 hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived 120 hours after birth, it is considered that the individual failed to survive for the required period.
- (2) This section does not apply if its application would cause the estate to pass to the state under Section 75-2-105.

Amended by Chapter 93, 2010 General Session

#### **75-2-105 No taker.**

If there is no taker under the provisions of this chapter, the intestate estate passes to the state for the benefit of the state school fund.

Repealed and Re-enacted by Chapter 39, 1998 General Session

**75-2-106 Definitions -- Per capita at each generation -- Terms in governing instruments.**

(1) As used in this section:

- (a) "Deceased descendant," "deceased parent," or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under Section 75-2-104.
- (b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under Section 75-2-104.

(2)

- (a) If, under Subsection 75-2-103(1)(a), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:
  - (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants; and
  - (ii) deceased descendants in the same generation who left surviving descendants, if any.
- (b) Each surviving descendant in the nearest generation is allocated one share.
- (c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(3)

- (a) If, under Subsection 75-2-103(1)(c) or (d), a decedent's intestate estate or a part thereof passes "per capita at each generation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:
  - (i) surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and
  - (ii) deceased descendants in the same generation who left surviving descendants, if any.
- (b) Each surviving descendant in the nearest generation is allocated one share.
- (c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(4)

- (a) If, under Subsection 75-2-103(1)(e), a decedent's intestate estate or a part of the estate passes "per capita at each generation" to the descendants of the decedent's deceased spouse, the estate or part of the estate is divided into as many equal shares as there are:
  - (i) surviving descendants in the generation nearest the deceased spouse that contains one or more surviving descendants; and
  - (ii) deceased descendants in the same generation who left surviving descendants, if any.
- (b) Each surviving descendant in the nearest generation is allocated one share.
- (c) The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(5) Any reference to this section found in a governing instrument for the definitions of "per capita," "per stirpes," "by representation," "share and share alike," "to the survivor of them," or "by right of representation" shall be considered a reference to Section 75-2-709.

Amended by Chapter 350, 2011 General Session

**75-2-107 Kindred of half blood.**

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

Enacted by Chapter 150, 1975 General Session

**75-2-109 Advancements.**

- (1) If an individual dies intestate as to all or a portion of his estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:
  - (a) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or
  - (b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.
- (2) For purposes of Subsection (1), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.
- (3)
  - (a) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.
  - (b) If the amount of the advancement exceeds the share of the heir receiving the same, the heir is not required to refund any part of the advancement.

Repealed and Re-enacted by Chapter 39, 1998 General Session

**75-2-110 Debts to decedent.**

A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

Repealed and Re-enacted by Chapter 39, 1998 General Session

**75-2-111 Alienage.**

No individual is disqualified to take as an heir because the individual or an individual through whom he claims is or has been an alien.

Repealed and Re-enacted by Chapter 39, 1998 General Session

**75-2-112 Dower and curtesy abolished.**

The estates of dower and curtesy are abolished.

Repealed and Re-enacted by Chapter 39, 1998 General Session

**75-2-113 Individuals related to decedent through two lines.**

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

Repealed and Re-enacted by Chapter 39, 1998 General Session

**75-2-114 Parent and child relationship.**

- (1) Except as provided in Subsections (2) and (3), for purposes of intestate succession by, through, or from a person, an individual is the child of the individual's natural parents, regardless of their marital status. The parent and child relationship may be established as provided in Title 78B, Chapter 15, Utah Uniform Parentage Act.
- (2) An adopted individual is the child of the adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on the relationship between the child and that natural parent.
- (3) Inheritance from or through a child by either natural parent or the child's kindred is precluded unless that natural parent has openly treated the child as the natural parent's, and has not refused to support the child.

Amended by Chapter 142, 2014 General Session